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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,353	01/05/2001	Carol Kohn Berning	8387$	4976

27752 7590 05/19/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER	
NGUYEN, TAN D	

ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/755,353	BERNING ET AL.	
	Examiner	Art Unit	
	Tan Dean D. Nguyen	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed 2/26/04 has been entered.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In order for the claimed invention to be statutory subject matter, the claimed invention must fall within one of the statutory classes of invention as set forth in § 101 (i.e. a process, machine, manufacture, or composition of matter). In the present case, claims 1-19 directed to "A method of conducting consumer product research", which is not within one of the classes of invention set forth in § 101.

The "method of conducting consumer product research" comprising the steps of (a) configuring a mock environment .. (b) placing at least one consumer ... and (c) collecting information .... are merely an abstract idea and do not produce a useful, tangible, concrete results.

The "method of conducting consumer product research" comprising the steps of (a) configuring a mock environment .. (b) placing at least one consumer ... and (c) collecting information .... are merely an abstract idea and not within the Technological Arts. The claimed invention does not involve any computer means or equivalents to carry out any functions and therefore are found to be non-statutory subject matter.

Claim Rejections - 35 USC § 112

Claim 19 recites the limitation "said consumer panel" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-4, 6-8, 12-16, 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Article 3/99 "New uses ... Old Brands" by Wansink et al.

6. As for Independent method claim 1, ARTICLE 3/1999 discloses a method for conducting consumer product research, comprising the following steps:

(a) configuring a mock environment (or simulated environment in the form of a "laboratory home") so as to test a product in a desired contest;

(b) placing at least one consumer within the mock environment for testing said product; and

(c) collecting information during testing of the product

(see page 3, 2nd paragraph of the Article). Alternatively, the testing of other similar product in other similar desired contest would have been obvious as mere using similar product in similar environment to obtain similar results.

Note that ARTICLE 3/1999 discloses that this is a better alternative to the "In-home testing" which is disclosed on page 2 of the specification due to the some similar disadvantages. Therefore, ARTICLE 3/1999 provides a solution similar to the claimed invention. As for the minor difference in the type of product or service testing, this is not critical since the real issue is creating a "laboratory home" wherein a mock or simulated environment is created. The "laboratory home" of ARTICLE 3/1999 can be used for testing any product in any desired contest since the claim is broad "a method of conducting consumer product research".

As for dep. Claim 2 (of independent claim 1 above), which relates to a well known mock environment parameter, the type of mock environment, i.e. # of areas in a simulated house, this is taught in par. 2 "lab home that has living areas, kitchen and bathroom".

As for dep. Claim 3 (of 1 above) which further limits (b) to within an "area", this is taught in taught in page 3, 2nd par. "consumer tour ... lab home that has living areas, kitchen and bathroom".

As for dep. Claim 4 (of 1 above) which deals with the time or when to collect the information, this is taught in ARTICLE 3/1999, page 3, 2nd par. Alternatively, the selection of the time for collecting information is within the skilled artisan as routine

experimentations to select the appropriate time which normally cover the completion of the testing to get complete information.

As for dep. Claim 6 (of 1 above) which deals the analyzing of information, this is taught in page 3, 2nd par.

As for dep. Claims 7-8 (of 1 above) which deals with the types of information, these are discussed on pages 2-3 of ARTICLE 3/1999. Alternatively, these are well known issues relating to conducting consumer product research as shown on the background of the invention, pages 1-2, and would have been obvious to an artisan to apply these concepts.

As for dep. Claim 13 (of 1/7 above) which deals with well known parameter of recording consumer feedback or the type of recording, this is mentioned in page 3, 1st and 2nd paragraphs, i.e. "videotapes". The use of audiovisual recording in any other place include in mock environment would have been obvious to obtain complete consumer feedbacks which includes images and data.

As for dep. Claim 19 (of 1/7 above) which deals with the testing of plurality of products, a well known product testing parameter, these are shown on page 6 with "Baking soda", "Vinegar", and "chewing gum".

As for dep. Claim 12 (of 1 above) which deals with a well known mock environment configuring parameter, this is shown in page 3, 2nd paragraph by the use of a kitchen or bathroom for the respective product.

As for dep. Claims 14-15 (of 1 above), these are taught in page 3, 2nd paragraph "Food and Brand Lab at the University of Illinois" and carrying out the research for various consumer products.

As for dep. Claim 16 (of 1 above), this is mentioned on page 2, 1st paragraph, "Advertising agencies", or also shown on page 5, last paragraph, "FoodandBrandLab.com". Alternatively, the setting up of the mock environment by any other establishment such as commercial would have been obvious for desired purpose to meet the commercial need.

7. Dependent Claims 5, 9-11, 17-18 (of Independent claim 1 above) are rejected under 35 U.S.C. 103(a) as being unpatentable over ARTICLE 3/1999.

As for dep. Claim 5 (of 1 above), the transmitting of the information during testing by other well known means such as broadcasting would have been obvious in view of the general teachings of various means, in-home interviews, write-in, phone surveys, etc. on page 2, to provide immediate feedback information to companies if immediate response is desired.

As for dep. Claim 9 (of 1 above) which discloses the well known step of screening a pool of candidates to become a testing consumer, this is well known survey parameter, and would have been obvious to do so to improve survey results which is matching the real user to the real product and real environment.

As for dep. Claims 10-11 (of 1 above) which further matching the mock environment to the consumer, this is fairly taught in page 3, 2nd paragraph which

general teaches the concept of matching the real user to the real product and real environment.

As for dep. Claims 17-18 (of 1 above), the selection of other type of product besides material such as service or a form of communication are considered as consumer product parameters and would have been to a skilled artisan as mere selection other similar product to obtain similar results since the kernel of the claimed invention is selection of a mock or simulated environment in the form of "laboratory home" so as to test any type product.

Alternatively, the selection of various parameters of conducting a consumer product research or testing is considered as optimizing operating conditions or result effective variables/parameters and the optimizing of result effective variables (or parameters) are considered as routine experimentation to determine optimum or economically feasible conditions and would have been obvious to the skilled artisan, absent evidence of unexpected results. There are no evidence of unexpected results shown in the specification on any of these variables/parameters. In re Aller, 105 USPQ 233.

8. Claims 20-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Article 3/99 "New uses ... Old Brands" by Wansink et al.

As for Independent apparatus claim 20, ARTICLE 3/1999 discloses a facility for conducting consumer product research, comprising:

(a) at least one mock environment (or simulated environment in the form of a "laboratory home") so as to test a product in a desired contest; and

(b) at least one device for collecting information during testing of the product (see page 3, 2nd paragraph of the Article). Alternatively, the testing of other similar product in other similar desired contest would have been obvious as mere using similar product in similar environment to obtain similar results.

As for dep. Claim 21 (of 20 above), it has the same limitation as in claim 2 and therefore is rejected for the same reason set forth in claim 2 above to avoid redundancy.

As for dep. Claim 22 (of 20 above), it has the same limitation as in claim 16 and therefore is rejected for the same reason set forth in claim 16 above to avoid redundancy.

As for dep. Claims 23-25, these are inherently included in ARTICLE 3/1999 in view of the teachins on page 3, 2nd paragraph wherein the information are further analyzed, ideas are then moved to other groups and surveys.

As for dep. Claims 26-27, these are taught in page 3, 2nd paragraph, page 4, and pages 6-8 (*) wherein different products, different purposes and events which require different settings or areas or rooms, focus groups and panels, are mentioned.

As for dep. Claims 28-30, these are taught in page 3, 2nd paragraph, page 4, and pages 6-8 (*) wherein different products, different purposes and events which require different settings or areas, focus groups and panels, are mentioned.

Note that ARTICLE 3/1999 discloses that this is a better alternative to the "In-home testing" which is disclosed on page 2 of the specification due to the some similar disadvantages. Therefore, ARTICLE 3/1999 provides a solution similar to the claimed invention. As for the minor difference in the type of product or service testing, this is not critical since the real issue is creating a "laboratory home" wherein a mock or simulated environment is created. The "laboratory home" of ARTICLE 3/1999 can be used for testing any product in any desired contest since the claim is broad "a facility for conducting consumer product research".

Response to Arguments

9. Applicant's arguments, see remarks, filed 3/3/04, with respect to the rejections of claims 1-19, 20-30 under 35 USC 102 (b)/103 (a) over ROE have been fully considered and are persuasive. The rejections of the claims 20-30 have been withdrawn. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

10. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiner. As the official records and applications are located in the clerical section of the examining Tech Center, the clerical personnel can readily provide status information without contacting the examiner. See MPEP 203.08. The Tech Center clerical receptionist number is (703) 308-1113

Or http://pair-direct.uspto.gov

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (703) 306-5771, or e-mail CustomerService3600@uspto.gov .

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (703) 308-2053. My work schedule is normally Monday through Friday from 7:00 am through 4:30 pm.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (703) 308-2702. The FAX phone numbers for formal communications concerning this application are (703) 305-7687. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

Other possibly helpful telephone numbers are:

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/ 8335
Fee Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Information Help Line	1-800-786-9199

dtn
May 17, 2004

DEAN T. NGUYEN
PRIMARY EXAMINER